

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for Class I reinstatement of oil and gas lease AA-48634-G.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Pursuant to 30 U.S.C. § 188(b) (1982), when a lessee fails to pay the required rental on or before the anniversary date of the lease, and no oil or gas is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the lease anniversary date does not constitute reasonable diligence.

APPEARANCES: Ann L. Rose, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Ann L. Rose appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated November 26, 1984, denying her petition for Class I reinstatement of noncompetitive oil and gas lease AA-48634-G. The decision also notified her of the opportunity to seek Class II reinstatement and the terms and conditions under which that reinstatement would be available.

The original lease, covering 6,400 acres, was issued to Trans Alaska Oil, Inc., effective July 1, 1983. On August 1, 1983, Trans Alaska Oil, Inc. executed an assignment of 40 acres of the lease to appellant and BLM approved the assignment effective September 1, 1983. BLM's decision approving the assignment notified appellant that her first rental payment was due on July 1, 1984.

On September 4, 1984, BLM sent appellant an oil and gas lease termination notice stating that lease AA-48634-G had terminated on the anniversary date of the lease, July 1, 1984, for failure to pay the rental in a timely manner. The envelope in which appellant had mailed her rental was postmarked at Milwaukee, Wisconsin, on July 3, 1984. The Minerals Management Service (MMS) (Denver) had received the payment on July 9, 1984. BLM's notice informed appellant of her right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (Class I reinstatement) and pursuant to 30 U.S.C. § 188(d) (1982) (Class II reinstatement). BLM's notice set forth the conditions for reinstatement under both Class I and Class II.

In her petition for reinstatement, appellant asserted that she dropped the envelope containing her rental payment in a mail box on June 28, 1984. Appellant felt sure the payment would reach the MMS office "by July 1 or thereabouts." She indicated that she was aware payment was due on July 1, but stated she did not find the "on or before" language in the lease she received from BLM. ^{1/}

In its November 26, 1984, decision, BLM denied appellant's petition for Class I reinstatement because she did not show that her failure to pay timely was either justifiable or not due to a lack of reasonable diligence, as required by 43 CFR 3108.2-1(a). BLM did find that appellant's failure to timely pay was inadvertent and that the lease could be reinstated under Class II reinstatement terms and conditions allowing appellant until December 7, 1984, 60 days from receipt of her termination notice, to meet the conditions, and stated that if she failed to do so, Class II reinstatement would be denied without further notice.

In her statement of reasons appellant asserts that she had no warning of "the stringent payment rule" or of the consequences if payment were not made on or before the anniversary date of the lease. Appellant suggests that the "on or before" language should have been qualified. She notes that her check was dated on June 28, 1984, and argues that she had no control over the affixing of the postmark. Appellant further states that she cannot afford the high cost of Class II reinstatement nor the high rental fee.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease, and where no oil or gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. Section 31(c), 30 U.S.C. § 188(c) (1982), provides that where a lease has terminated and the lessee has paid the full rental within 20 days after the lease anniversary date, the Department may, under certain circumstances, reinstate the lease, if the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. See 43 CFR 3108.2-2(a) (Class I). Melvin P. Clarke, 90 IBLA 95, 97-98 (1985). E.g., Harry L. Bevers, 84 IBLA 158, 160-61 (1982); Leo M. Krenzler, 82 IBLA 205, 207 (1984).

^{1/} This language is found in section 2(e) of the "lease terms" on the back of Form 3110-1 "Offer to Lease and Lease for Oil and Gas" serialized AA-48634 herein.

Regulation 43 CFR 3108.2-2(b) provides: "The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee." See also Leo M. Krenzler, *supra* at 207; Anthony F. Hovey, 79 IBLA 148, 149 (1984).

Under 43 CFR 3108.2-1(a) a remittance which is postmarked by the U.S. Postal Service on or before the anniversary date and received in the proper office no later than 20 days after such anniversary date will be considered a timely filed remittance. The implication from the regulation is that the lease does not terminate in such a situation. Such a result, however, is contrary to 30 U.S.C. § 188(b) (1982), which provides that a lease terminates by operation of law "upon failure of a lessee to pay rental on or before the anniversary date." (Emphasis added.) Thus, the Board has interpreted that provision as providing a ground for satisfying the reinstatement criterion of reasonable diligence. William F. Branscome, 81 IBLA 235 (1984); Anthony F. Hovey, *supra* at 151 n. 1 (Judge Grant concurring).

In this case the anniversary date of the lease was July 1, 1984. The remittance would have had to have been postmarked on or before that date to take advantage of the 43 CFR 3108.2-1(a) mailing provision. As noted above, however, the envelope bore a postmark of July 3, 1984. Thus, 43 CFR 3108.2-1(a) does not apply.

It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. Dena F. Collins, 86 IBLA 32, 35 (1985); James P. Felt, 84 IBLA 205, 207 (1984). In Leo M. Krenzler, *supra* at 209, the Board stated, "[m]ailing the payment 1 day after it is due does not constitute reasonable diligence." Reasonable diligence normally requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. Leo M. Krenzler, *supra* at 209; Anthony F. Hovey, *supra* at 149.

While appellant notes that her check was dated on June 28, 1984, and she alleges she mailed it on that day, the envelope clearly discloses a July 3, 1984, postmark. As the Board has noted in the past, in the absence of credible evidence the Board will not go beyond the postmark as establishing the date of mailing. See W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (1975). So, too, in this case, in the absence of other corroborative evidence as could establish the date of mailing, the July 3, 1984, date must be deemed controlling.

It is unfortunate that appellant may have misunderstood or misconstrued the lease payment terms and the necessity of timely payment. The law, however, is clear. It would have been her responsibility to clear up any uncertainties. See Marion E. Banks, 88 IBLA 341, 344 (1984).

Appellant has failed to carry her burden of proving that her failure to timely pay the rental was not due to a lack of reasonable diligence and has alleged no basis for reinstatement based upon a justifiable standard. Moreover, she has stated that she would not petition for Class II reinstatement because she could not afford to do so. Therefore, we do not address that issue.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge.

